REMARKS

The examiner is thanked for the performance of a thorough search. Each issue raised in the Office Action mailed September 12, 2003 is addressed hereinafter.

I. REJECTION BASED ON 35 U.S.C. §102(e)

The Office Action has rejected Claims 1-1, 6-9, 14-16, 20-22, 24, and 27-30 under 35 U.S.C. 102(e) as being anticipated by Martin (U.S. Pat. No. 6,154,776). Applicant notes that the Office Action cites Claim 25 in the text, but does not list said claim in the 35 U.S.C. 102(e) rejection.

Applicant respectfully disagrees.

In a proper rejection under § 102(e) the cited reference must show each and every claimed feature in the same combination as arranged in the claim. See Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 747-48, 3 USPQ2d 1766, 1768 (Fed. Cir. 1987). If even a single element or limitation is missing from the reference, anticipation is not found. Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Claim 1 appears as follows:

> 1. A method of selectively establishing a quality of service value for a particular network device in a network that comprises a plurality of other heterogeneous network devices, comprising the steps of:

receiving application information that defines one or more traffic flows associated with one or more message types generated by an application program, including information identifying one or more points at which an application generates the traffic flows;

receiving device information that defines one of more quality of service treatments that the particular network device may apply to data processed by the particular network device;

based on the device information and the application information, determining one or more processing policies that associate the traffic flows with the quality of service treatments;

creating and storing one or more mappings of the application points to the quality of service treatments that may be used with the processing policies to generate the quality of service value when the application program generates traffic flows of one of the message types; and

causing generation of the quality of service value, wherein the generation of the quality of service value is based on said one or more mappings and is performed before transmitting said traffic flows of one of the message types to said network.

In particular, Martin does not disclose a system that receives application information that defines one or more traffic flows associated with one or more message types generated by an application program, including information identifying one or more points at which an application generates the traffic flows as claimed in the invention. Martin teaches away from such a system by teaching that an allocation of a QoS is performed in response to the detection of a new instance of an entity associated with a flow. Col. 3, lines 46-49 state (emphasis added):

> "As opposed to conventional apriori allocation of QoS configuration rules, an embodiment of the invention provides an allocation of a QoS in response to detection of a new instance of an entity associated with a flow. In this manner the QoS can be allocated dynamically as activity for an entity starts. As a result, **the configuration rules are only created when the flows to which they apply are present.**"

Thus, Martin teaches that a new entity is detected and then the QoS is created in response to the detection. Martin keys on the entity detection. However, the invention as claimed cites "information identifying one or more points at which an application generates the traffic flows." Martin does not contemplate the use of application points which are points where an application generates traffic flows because Martin has no need for such information. Martin waits for the flow to begin in order to detect the entity and, thus, create the QoS.

Further, Martin does not disclose a system that creates and stores one or more mappings of the application points to the quality of service treatments that may be used with the processing policies to generate the quality of service value when the application program generates traffic flows of one of the message types as claimed in the invention. Martin does not contemplate application points and, therefore, cannot teach or disclose such a system.

Applicant would like to point out that the Office Action does not address the amendments made to the claims in the Response to the Office Action dated September 25, 2002. More specifically, Claims 1, 20, 21, 29 and 30 cite the following:

> creating and storing one or more mappings of the application points to the quality of service treatments that may be used with the processing policies to generate the quality of service value when the application program generates traffic flows of one of the message types; and

The Office Action cites:

> "Creating and storing one or more mappings of the application information to the quality of service treatments that may be used to generate the quality of service value when the application program generates traffic flows"

This is an incorrect and inaccurate characterization of the claimed element that ignores unique features of the invention, namely, application points and message types.

Applicant further points out that the Office Action dated 17 March 2003 states that Martin does not disclose the method of Claim 1:

> "As per claims 1, 20, 21, 29, and 30, Martin does not explicitly disclose a method of selectively establishing a quality of service value for a particular network

device in a network that comprises a plurality of other heterogeneous network devices, comprising the steps of:

Receiving application information that defines one or more traffic flows associated with one or more message types generated by an application program, including information identifying one or more points at which an application generates the traffic flows."

Martin therefore does not teach every aspect of the claimed invention.

Claim 1 is therefore allowable.

Independent Claims 20, 21, 29, and 30 are similarly allowable. Claims 2, 6-9, and 14-16 are dependent upon Claim 1 and are allowable. Claims 22, 24, 25, and 27-28 are dependent upon Claim 16 and are allowable. Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. 102(e).

II. REJECTION BASED ON 35 U.S.C. §103(a)

The Office Action has rejected Claims 3-4 and 23 under 35 USC §103(a) as being unpatentable over Martin in view of Chapman et al. (U.S. Pat. No. 6,028,842).

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1, 20, 21, 29, and 30, above. Claims 3-4 and 23 are dependent upon Independent Claims 1 and 21, respectively. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

III. REJECTION BASED ON 35 U.S.C. §103(a)

The Office Action has rejected Claims 10-11, 17, 19, and 26 under 35 USC §103(a) as being unpatentable over Martin in view of Chapman et al. in further view of Mohaban et al. (U.S. Pat. No. 6,028,842).

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1, 20, 21, 29, and 30, above. Claims 10-11, 17, and 26 are dependent upon Independent Claims 1 and 21, respectively. Claim 19 is allowable in similar manner to Claims 1, 20, 21, 29, and 30. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

IV. REJECTION BASED ON 35 U.S.C. §103(a)

The Office Action has rejected Claims 12 and 13 under 35 USC §103(a) as being unpatentable over Martin in view of Schwaller et al. (U.S. Pat. No. 6,061,725).

The rejection under 35 USC §103(a) is deemed moot in view of Applicant's comments regarding Claims 1, 20, 21, 29, and 30, above. Claims 12 and 13 are dependent upon Independent Claim 1. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(a).

V. REJECTION BASED ON 35 U.S.C. §103(c)

The Office Action has rejected Claim 18 under 35 USC §103(c) as being unpatentable over Martin in view of McCloghrie et al. (U.S. Pat. No. 6,286,052).

The rejection under 35 USC §103(c) is deemed moot in view of Applicant's comments regarding Claims 1, 20, 21, 29, and 30, above. However, Applicant points out that MPEP 706.02(l)(1) states:

> "The mere filing of a continuing application on or after November 29, 1999, with the required evidence of common ownership, will server to exclude commonly owned 35 U.S.C. 102(e) prior art that was applied, or could have been applied, in a rejection under 35 U.S.C. 103 in the parent application."

The current application is a CPA of Application Ser. No. 09/347,438. Applicant has filed a statement of common ownership with the filing of the present application. Therefore, the use of McCloghrie under 35 USC §103(c) is excluded per MPEP 706.02(l)(1).

Claim 18 is dependent upon Independent Claim 1. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §103(c).

For the reasons set forth above, Applicant respectfully submits that all pending claims are patentable over the art of record, including the art cited but not applied. Accordingly, allowance of all claims is hereby respectfully solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

Respectfully submitted,

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